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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MDD/142402

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on August 22, 2012, at Port Washington, Wisconsin.

The issue for determination is whether the Petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. Petitioner is 3 years, 4 months old. He resides with his parents.
3. Petitioner has diagnoses of autism, eating disorder, developmental coordination disorder, speech and language delays.

4. Petitioner has sensory issues and feeding issues. He has extreme sensitivity to having his hair combed, brushed or washed. He is sensitive to loud noises and to sticky items on his skin. He will not eat most foods and is sensitive to the surface on which food or drink is served. He bottle feeds and eats baby foods. He has started to eat some limited amounts of solid food. He struggles with using utensils. He is learning to brush his teeth but cannot do so independently. He cannot bath or wash himself independently. He is learning to dress himself but cannot do so independently at this time. He is not toilet trained. Because of his limited diet, he has problems with severe constipation. His bowel movements are very painful.
5. The Petitioner is not aware of his own safety or boundaries and engages in behaviors that could cause injury such as close proximity to hot items and climbing. He engages in self-injurious behavior such as hand-banging and hit himself. He hits himself in the face, ears and stomach with fists and with open hands. If he is not stopped, he will hurt himself.
6. Petitioner participates in speech and eating therapy two days/week, 30 minutes of speech therapy and 30 minutes of eating therapy.
7. On November 21, 2011, a CLTS application was filed with the agency on behalf of the Petitioner.
8. On April 13, 2012, the agency denied the application finding the Petitioner is not disabled. A request for reconsideration was filed on May 10, 2012. On July 11, 2012, the agency affirmed its denial of the application.

DISCUSSION

Current standards for childhood disability were enacted following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A disabling impairment for children is defined as follows:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet or medically or functionally equal the requirements of a listing in the Listing of Impairments in appendix 1 of Subpart P of part 404 of this chapter, or
- (2) Would result in a finding that you are disabled under § 416.994a.

20 C.F.R. § 416.911(b). The reference in § 416.994a subsection (2) describes disability reviews for children found disabled under the prior law. Since the petitioner's disability began after the new law was passed, he must meet or equal a listing described in subsection (1).

The process for determining whether an individual meets this definition is sequential. See 20 C.F.R. § 416.924. First, if he is doing "substantial gainful activity," he is not disabled and the evaluation stops. The petitioner is not working, so he passes this step.

Second, physical and mental impairments are considered to determine whether the claimant has an impairment or combination of impairments considered severe. If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it will not be found to be severe. 20 C.F.R. § 416.924(c). The agency determined that the Petitioner's impairment is severe so this step is met.

An applicant functionally equals a listed disability if he proves that he has an extreme limitation in one broad area of functioning or marked limitations in two broad areas of functioning. 20 C.F.R. § 416.925. An extreme limitation interferes very seriously with the child's ability to "independently initiate, sustain,

or complete activities.” It does not necessarily mean a total lack or loss of ability to function. See 20 C.F.R. § 416.926a(e)(3). A marked limitation “interferes seriously with [the] ability to independently initiate, sustain, or complete activities.” 20 C.F.R. § 416.926a(e)(2). SSI rules require review of the following six domains when determining whether the petitioner has limitations: (1) Acquiring and using information, (2) Attending and completing tasks, (3) Interacting and relating with others, (4) Moving about and manipulating objects, (5) Caring for yourself, and (6) Health and physical well-being. 20 C.F.R. § 416.926a(b)(1).

The agency determined the Petitioner has a marked limitation in “moving about and manipulating objects.” It found he has a less than marked limitation in two other domains: “interacting and relating with others” and “caring for yourself.” In the remaining three domains, the agency determined the Petitioner has no limitations.

The Petitioner’s parents testified at the hearing. They stated that sensory and feeding issues are the primary concerns for the Petitioner. They testified that there was essentially no testing done regarding these issues and that the tests that were administered as part of this process were not geared toward these primary issues.

The Petitioner’s parents testified that the Petitioner has sensory issues that affect all areas of his life but the primary area that is affected is his eating. Because of texture sensitivity, the Petitioner eats only a limited number of solid foods and does so inconsistently. Until recently, the Petitioner ate only from a bottle (soy formula) and Level 1 and 2 baby foods. He eats some Level 3 baby foods. The type of baby food he will consume is limited. The type and amount of other solid foods that he will eat is limited. It is also inconsistent in that he will sometimes eat only a bite or two and other times eat more. In addition to the texture of food, the type of surface that food or drink is served on or in is significant. The Petitioner will eat or drink only if the texture of the surface is satisfactory at the time. This also changes frequently and without warning. Until recently, he was unable to use utensils. He now uses them but finds it to be a challenge. Even with significant intervention by parents and other adults, the Petitioner’s diet is extremely limited. Without significant intervention, the Petitioner would eat very little.

The Petitioner is unable to independently brush his teeth, bathe, wash, dress or use the toilet. He has made some progress with brushing his teeth and cooperating with dressing and washing. He also has extreme sensitivity to hair cutting, combing, brushing or washing.

The Petitioner has little safety awareness and engages in self-injurious behavior such as hitting himself in the face, ears and stomach. If not stopped, he will hurt himself.

The Petitioner’s parents submitted a diagnostic evaluation, initial treatment plan, summary of development and OT evaluations in support of their arguments.

Based on the testimony and evidence, I find that the Petitioner meets the definition of “marked” limitation in the domain of caring for himself. At this time, his limitations in activities of daily living and caring for himself interfere seriously with his ability to carry out any of these activities independently or in an age appropriate manner.

CONCLUSIONS OF LAW

The Petitioner functionally equals a listed disability because he has marked limitations in two domains. Petitioner is disabled.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to continue processing petitioner's application based upon a finding that he is disabled.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

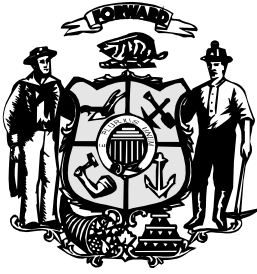
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of September, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Sheboygan County Department of Human Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 18, 2012.

Sheboygan County Department of Human Services
Disability Determination Bureau